

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11540 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RUSHABHAI GAYAPRASAD JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11540 of 2003
MR DC SEJPAL for Petitioner No. 1
RULE SERVED BY DS for Respondent No. 1-2
MS MITA PANCHAL Ld. AGP for Respondent No. 3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

By way of this special civil application, the

petitioner has challenged the order of detention passed against him by the District Magistrate, Ahmedabad on 18.7.2003 under the exercise of powers under sec. 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short).

The grounds served upon the petitioner and placed on record reveal that on 16.6.2003 Local Crime Branch Police intercepted three trucks bearing No. GJ-8T-3903, GJ-13T-5990 and GJ-7T-7627. The police found tankers and one truck loaded with solvent like liquid and, therefore, the District Supply Officer of Ahmedabad was informed and took over the investigation. According to the statements of the drivers, there is a Dev Industry, situated at Sanand and dealing in manufacturing the goods which were loaded in truck from the said Dev Industry from Sanand and according to him, the goods which alleged to have been solvent was to be unloaded at Ahmedabad near Ellis Bridge to one Ajit Jain. It was also from the statement and enquiry revealed that the land on which this Dev Industry is situated, was originally known as Rishi Petrochem Pvt. Ltd. belonged to the petitioner in capacity of the Director of the company, which was thereafter, leased to a person named Harshad Sodha on monthly rent of Rs. 50,000/-. The authorities found that though the present petitioner was de facto owner of the said industry, in conspiracy with Harshadbhai Madhubhai Sodha and Ajit Jain had been dealing with the solvent illegally in breach of the Control Orders published in Essential Commodities Act, 1955. One of the tanker bearing No. GJ-7T-7627 was driven by driver Raish Ahmad and according to him, the goods was carried as per the bulity of Citizen Transport and Vardhman Transport whose telephone numbers were 2894573 and 2894568. On enquiry, it was found that these telephone numbers belonged to the petitioner. The authorities also found from the statements of three drivers and other materials that the transaction of lease of the Dev Industry was camouflaged by the petitioner and other two persons to escape from liability of dealing in the chemical like solvent. All these materials were placed before the detaining authority. The detaining authority came to be conclusion that the petitioner was de facto owner of Dev Industry and Vardhman as well as Citizen Transport and the document of the lease in the name of Harshad Madhubhai Sodha, was camouflaged and was executed in fact, in conspiracy with Harshad Madhubhai Sodha and Ajit Jain and the petitioner indulged in the illegal activities of dealing with the chemical solvent. For the production and selling of solvent, according to the

detaining authority, a licence is required under the Essential Commodities Act, 1955. Secondly, the detaining authority also came to the conclusion that the solvent is easily soluble in diesel and petrol. Since the prices of petrol and diesel were higher and it was likely that petitioner and diesel were higher and it was likely that petitioners and other persons mixing the solvent solution in the petrol and diesel were indulging in the activity of black marketing and those activities were required to be prevented by detention. According to the detaining authority, there was no other alternative except to detain the petitioner under the PBM Act to prevent the illegal activities of the petitioner and hence, the order impugned came to be passed.

Ld. Senior counsel Mr. PM Thakkar for the petitioner, ld. AGP Ms. Panchal for the respondents no. 1 to 3 and ld. Addl. Central Government Standing Counsel Ms. Davawala for respondent no. 4 were heard at length. The affidavit in reply filed by the detaining authority as well as Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi, as placed on record, are also taken into consideration.

Ld. senior counsel for the petitioner raised three contentions; firstly, the petitioner was in judicial custody when the order came to be passed and served upon the petitioner in a crime registered against him being Sanand Police Station CR No. II-56/2003. Ld. sr. counsel contended that the conclusion and subjective satisfaction as to the likelihood of the petitioner being released on bail and likelihood of continuing his activity is based on no material. It was stated that the petitioner was in judicial custody till recently and was released on bail before some days. It was also further contended that the grounds served upon the petitioner revealed that an offence came to be registered against the petitioner under sec. 3 and 7 of Essential Commodities Act, 1955, as aforesaid. The FIR was lodged by Police Inspector, LCB. Ld. sr. counsel contended that neither the FIR nor the papers for the investigation were placed by the proposing authority before the detaining authority, even though the same being vital material to arrive at subjective satisfaction by the detaining authority in the matter. The third contention was raised in respect of the material seized from the trucks are whether contraband and leading to the breach of the Control Orders published under the Essential Commodities Act, 1955. It was, therefore, contended that the order impugned in this petition is required to be quashed and

set aside on the above grounds.

Ld. AGP and ld. Addl. Central Government Standing Counsel for Union of India controverted above three contentions raised and contended that the facts revealed discloses serious conspiracy amongst the petitioner and other two persons in dealing with solvent. Ld. AGP has taken this court through the grounds and materials relied upon by the detaining authority and placed on record. The statements of the drivers of the trucks intercepted and checked by the Local Crime Branch Police were also gone through. It was also contended that this is not a maiden incident in which the petitioner is involved as per the material placed before the detaining authority. It was contended that driver Hadaksinh in his statement has admitted that earlier also he, in his truck carried bulk of solvent from some other State and had unloaded at the Dev Industry. Attention of this Court was drawn to the statements of driver Hadaksinh wherein he stated that the bulky of Citizen Transport denoted that the goods were loaded from Madhya Pradesh and was to be delivered to Shirohi, Rajsthan and at the instance of the petitioner, he took his truck bearing No. GJ-13T-5990 at Dev Industry, village Nigrad, Tal. Sanand. Ld. AGP advertng to the seriousness of the activity found from the cogent material contended that the subjective satisfaction of detaining authority that on being released on bail, the petitioner was likely to indulge in illegal activities cannot be impeached, and therefore, the order impugned cannot be quashed on that ground. For the second contention, on behalf of the respondents, it was contended by ld. AGP that the material which was placed before the detaining authority was sufficient to reach to the subjective satisfaction and that the detaining authority did not rely upon the copy of the FIR filed against the petitioner. It was contended that the order on this ground also is not required to be quashed having regard to the seriousness of the allegations levelled against the petitioner.

Having heard rival contentions and dealing with the first contention taken by ld. senior counsel for the petitioner, it is clear that vide ground para-11 the detaining authority reached to subjective satisfaction that in the said criminal case registered against the petitioner, the petitioner was in judicial custody. The detaining authority, further reached to the subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue his illegal activity and, therefore, the preventive detention was the only effective measures to prevent such activities of the

petitioner. In affidavit in reply, the detaining authority has further clarified vide para-23 that the petitioner was wanted accused in the said criminal case and was taken into custody on 12.7.2003 and was produced before the JMFC concerned on 19.7.2003 at about 18.00 hrs. Now, true it is that this court dealing in jurisdiction vested by Article 226 of the Constitution of India cannot sit as a court of appeal upon an order passed by the administrative authority, but at the same time this special jurisdiction confer upon the court empowers it to examine whether the order passed is based on material or no material. Further, this court can also examine that whether reasonable subjective satisfaction could have been arrived at from the material placed before the authority. The contention is raised in respect of subjective satisfaction of the detaining authority as to likelihood of the bail which may be granted to the petitioner and likelihood of his being involved in continuing the same illegal activities. Examining the issue from the point of view that whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and that he was likely to continue his illegal activities, undoubtedly, this subjective satisfaction of the detaining authority must be based on material. The observations of the Apex Court in the matter of Amrutlal and other vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675, are extremely helpful to decide the issue. In para-4, 6 and 7, the Apex Court observed as under:

"4. In Agustin's decision (1994 Supp(1) SCC 597)

(supra) this Court also placed strong reliance on an earlier but off-cited decision of this Court in Binod Singh vs. District Magistrate, Dhanbad, (1986)4 SCC 416: (AIR 1986 SC 2090: 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned

officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amrutlal I am satisfied that there is compelling necessity in view of the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1985."

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090:1986 Cri LJ 1959)(supra) that there is likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the "likelihood of his moving an application for bail" which is different from 'likelihood to be released on bail.'" This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

It is a question of fact in each case that what could be the material from which the detaining authority could reach to subjective satisfaction as to likelihood of the detenu to be released on bail, but it should be cogent material. If the subjective satisfaction is reached without any material, in this respect, would lead vitiating a subjective satisfaction arrived at by the detaining authority, and further detention of the detenu would be bad in law. In the present case, admittedly, the petitioner was in judicial custody. The detaining authority may reach to a subjective satisfaction that though the detenu being in judicial custody was likelihood to be released on bail but for that subjective satisfaction, the detaining authority must rely upon

cogent material. In the present case, no such cogent material is found from the record. The allegations made against the petitioner and the objectional activities of the petitioner may be serious to worst extent. In fact, the detention laws are the exception to the Constitutional guarantee of liberty granted to the citizen and, therefore, instead of measuring the seriousness of the allegations, it is always insisted by the courts of law that the safe-guard as envisaged by the Constitution must be strictly adhered to. Graver seriousness of the allegations always ensues more careful observance of the safe guard. In short, as had been said by the Apex Court in the case of Amrutlal (supra) the subjective satisfaction of the authority in respect of likelihood to be released on bail is not based on cogent material. The order impugned in this special civil application is required to be quashed on this ground alone.

Ld. AGP relied upon two decisions of the Apex Court. The first, in the matter of Ahamed Nassar vs. State of Tamil Nadu and others., as reported in (1999)8 SCC 473. This was a case wherein the detaining authority relied upon cogent material to form subjective satisfaction that the petitioner was likely to be released on bail and the Apex Court came to the conclusion that the subjective satisfaction of the detaining authority could not be said to be based on no material. Para-46 and 47 of the said decision of the Apex Court, explicitly makes it clear as under:

"46. So before the detaining authority, there existed not only the order dated 12.4.1999 rejecting his bail application but the contents of the bail application dated 1.4.1999. The averments made therein are relevant material on which subjective satisfaction could legitimately be drawn either way. Thus in spite of rejection of the bail application by a court, it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstances that there is likelihood of the detenu being released on bail. Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The words "likely to be released" connote chances of being bailed out, in case there be pending bail application or in case

if it is moved in future is decided. The word "likely" shows it can be either way. So without taking any such risk if on the facts and circumstances of each case, the type of crime to be dealt with under the criminal law, including contents of the bail application, each separately or all this compositely, all would constitute to be relevant material for arriving at any conclusion. As the contents of bail application would vary from one case to the other, coupled with the different set of circumstances in each case, it may be legitimately possible in a given case for a detaining authority to draw an inference that there is likelihood of the detenu released on bail. The detention order records:

"The Administrator of the National Capital Territory of Delhi is aware that you are in judicial custody and had not moved any bail application in the court(s) after 9.6.1992 but nothing prevents you from moving bail applications and possibility of your release on bail cannot be ruled out in the near future. Keeping in view your modus operandi to smuggle gold into India and frequent visits to India, the Administrator of the National Capital Territory of Delhi is satisfied that unless prevented you will continue to engage yourself in prejudicial activities once you are released."

47. Thus, we hold the conclusion of the detaining authority on the facts of the present case, "there is likelihood of his being released on bail" cannot be said to be based on no relevant material."

The other decision which ld. AGP relied upon is in the matter of Meena Jayendra Thakur vs. Union of India and others., as reported in (1999)8 SCC 177. In the facts and circumstances of the case, while negating the contention of the petitioner recorded in para-14 of the decision in para-15 of the decision the Apex Court came to the conclusion that the detaining authority on consideration of all relevant material including a fact that there may be a possibility of detenu being released on bail thought it fit to get the order of detention

served upon the detenu. Therefore, this case from the above observation of the Apex Court, makes it clear that the ratio laid down by the Apex Court in the matter of Amrutlal (supra) has not been modified by the Apex Court. In this view of the matter, the order impugned is required to be quashed and set aside on this ground alone and continued detention of the petitioner becomes bad in law. In this view of the matter, next two contentions raised on behalf of the petitioner are not required to be dealt with.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 18.7.2003 by the District Magistrate, Ahmedabad, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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